HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.671 of 2006

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Between:

Ashoknagar Cultural & Welfare Association,
represented by its Secretary, Hyderabad. .....
Petitioner.

And

Municipal Corporation of Hyderabad,
represented by its Commissioner, Hyderabad
and others.

.....
Respondents.

:: O R D E R ::

Counsel for the petitioner : Sri L.Ravichander

Counsel for the respondents for : Sri Islamuddin Ansari

Sri Ghanta Rama Rao.

5th February, 2007

Per G.S. SINGHVI, C.J.

This is a petition for grant of a declaration that the action of the respondents to demolish a portion of the compound wall belonging to the petitioner – Ashok Nagar Cultural and Welfare Association is arbitrary, illegal and violative of Articles 14, 19 and 300-A of the Constitution of

India and the provisions of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the 1955 Act') and for issue of a mandamus to the respondents to re-construct the wall.

A perusal of the pleadings contained in the affidavits of the parties and the record produced by Sri Islamuddin Ansari, learned counsel for the respondents shows that vide Permit No.3/1, dated 24-11-1960, the Municipal Corporation of Hyderabad (for short, 'the Corporation') sanctioned layout in respect of 2800 square yards of land belonging to Andhra Pradesh Government Employees Co-operative Housing Society (hereinafter described as 'the society'). In terms of the sanction, the open spaces indicated in the layout vested in the Corporation. Later on, the Corporation handed over some portion of the open spaces to the society for the purpose of developing public amenities like roads, parks etc. In 1963, the society transferred 1086 square yards of the total land to the petitioner association. After seven years, the society submitted application dated 21-11-1970 to the Special Officer of the Corporation to utilise 164 square yards of the park area for public use of the colony. The Special Officer accepted the request of the society. This was conveyed to the Secretary of the society vide letter No.P/A1/71, dated 15-1-1971. For the sake of reference, that letter is reproduced below:

> "With reference to your application dated 21-11-1970, permission is hereby accorded for annexing the piece of land B C
> F E measuring about 164 sq.yds. from Municipal Park area to the Cultural Society building premises for public use of the colony, subject to the condition that this piece of land is kept vacant and no structure is built on it except a compound wall around.
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> A copy of the plan is enclosed."

After 19 days, the Special Officer, vide his letter dated 3-2-1971, permitted the society to use a portion of the park for establishing a dispensary. That letter reads as under:

> "In continuation of this office letter 1st cited, this is to inform you that the proposal of the society to construct a dispensary on a portion of land now transferred by the MCH from park site to the community hall is hereby approved as the dispensary is for public cause and philanthropic purpose. The society may obtain prior sanction of the construction of the dispensary."

The petitioner's grievance is that in the garb of road widening programme, the officers of the Corporation demolished the compound wall and, in this manner, it is being deprived of the property. In the affidavit filed by Sri C.J. Sastry, Secretary of the petitioner association, it has been averred that the association is sought to be deprived of the land without following procedure prescribed under the Land Acquisition Act, 1894. In paragraphs 8 and 9 of his affidavit, Sri C. J. Sastry has averred as under:

> "8. I submit that no negotiations with the owners have taken place for the purpose of acquiring the land in question. I submit that any violation in following the procedure of negotiation prior to seeking to acquire the land would be a clear violation of procedure prescribed under law. The authorities are bound to negotiate and only on such failure proceed to take such steps as provided for under the Land Acquisition Act. It is relevant to point out that even under the Land Acquisition Act, it is not as if the authorities can march into the properties of the individuals. A detailed procedure is prescribed and the authorities under the Land Acquisition Act are bound to follow the same. In the instant case, the procedure has been violated in its breach. No notification under Sec.4(1) of the Land

Acquisition Act has been issued. No enquiry under Sec.5A was conducted. No declaration under Sec.6 has been issued and in fact, cannot be issued in the absence of notification under Sec.4(1) of the Act. On enquiry, the authorities said that they were under the impression that the land belonged to them and, therefore, proceeded to demolish the compound wall. Assuming without conceding that the authorities believed the land to be theirs, the fact that the petitioner has been in possession and enjoyment of the same for over 40 years would entitle the petitioner to notice as owner by adverse possession and title. Assuming further without conceding that the petitioner is mere encroacher on the land, even then a notice under the Land Encroachment Act ought to be given under the Act. The Land Encroachment Act is in itself a self defined code providing for remedies which cannot be defied and denied high-handedly by the authorities of Municipal Corporation of Hyderabad. The action of the respondents is highly objectionable and is a serious threat to the citizens under the rule of law. It is contextually relevant to point out that according to the respondents, the land in question is required for road widening. It is strange that only a length of about 100 ft. is being taken on a road which runs to about 1 km. This clearly indicates that the action is without any plan and is based on shocking handedness which in itself is a manifestation of arbitrary action and is thus impermissible under the statute.

9. I further submit that independent of our rights under the law, the petitioner also voiced its willingness to part with a portion of the property in keeping with the requirements of the Municipal Corporation. As a responsible society, the petitioner is aware of the fact that broad roads are for the good of the citizens and it is in everybody's interest that such roads are constructed. In fact, keeping this in view, the petitioner was more willing to offer a part of the land to enable the Municipal Corporation to proceed with the construction in question. However, no construction is being taken presently. It is

relevant to point out that there is also a controversy brewing on the exact extent of land to be taken and the exact width of the road. It is relevant to point out that while the government has approved for a 40 ft. road, the government issued Memo No.18220/M1/2004-2MA, dated 12-1-2005. Attention of the 1st respondent was invited to road widening of the road connecting Ashoknagar X Roads to Himayatnagar (Road No.9) and directed that the present road be restricted to 40 ft. as per statutory development plan by taking 5 ft. on either side equally. A copy of the said Memo is filed in the material papers for ready reference of this Hon'ble Court. Instead of acquiring the land in accordance with the said direction, in apparent guise of road widening the authorities are now saying that they were acquiring 10 ft. which would be without the authority of law."

The deponent has also relied on Memo No.18220/M1/2004-2MA, dated 12-1-2005 and order dated 13-6-2005 passed by the learned Single Judge in Writ Petition No.4177 of 2005 – **R.Vidyasagar Rao v. The District Collector, Hyderabad** and averred that the width of the road cannot be extended beyond 40 feet.

In the counter filed by Sri L.Bikshapathi, Assistant City Planner, Circle-3 (respondent No.2), it has been averred that a portion of the open space identified in the layout, which vested in the Corporation, has been utilised for development of park and some portion was utilised by the petitioner association for putting up a dispensary. The deponent has then averred that the petitioner association is not the owner of the open space and, therefore, it cannot resist or object to the utilisation thereof for the purpose of road widening. In paragraph 4 of his affidavit,
Sri L.Bikshapathi has averred as under:

"4. In reply to paras 7 to 9 of the affidavit, I

submit that the respondent corporation proposes to widen the road in the public interest and even acquiring the property of individuals either with their consent or by following the procedure of Land Acquisition Act whenever the owner refused to give consent. I submit that the present property is concerned as stated above, it is the vested property of the corporation and the petitioner association is not having any ownership right over the land in question. I submit that as stated in the above said paras, the land in question is an open space and the same is vested with the corporation for development of park. It is not open to the petitioner to question the action of the respondent corporation in utilising the part of the open space for the purpose of road widening, and on the other hand, the petitioner association has no right whatsoever to construct the building in the open space. I submit that in respect of the properties newly developed abutting the side of the existing road, the respondent corporation is insisting upon to leave 10 feet for the purpose of road widening and also requested the owners of the properties to surrender the land to an extent of 10 feet to enable the respondent corporation to widen the road to meet the increased traffic requirements and to ease the traffic congestion. I submit that the respondent corporation did not demolish any building and it is utilising the open space which is already vested with the corporation. It is true that the government had issued a Memo vide Memo No.18220/M1/2004-2, dated 12-1-2005 in respect of some private properties. In any view of the matter, the petitioner cannot question the action of the respondent for utilising the part of the open space which is already vested with the corporation. Under the facts and circumstances as mentioned above, the writ petition as framed, is not maintainable and the same is liable to be dismissed."

We have heard learned counsel for the parties. At the outset, we are constrained to express our unhappiness that in large number of cases filed in this Court with the

complaint that the actions taken by the officers of the Corporation are contrary to law, or otherwise arbitrary, nobody appears for the respondents necessitating adjournment of the case. We have, time and again, expressed anguish over non-representation of a public body like the Corporation, but there has been no improvement. Arguments in this case were heard on 2-2-2007, but the case could not be disposed of because the counsel for the Corporation was not available. The case was adjourned for today with the direction to the Assistant City Planner, Circle 3 to appear in person along with the records. Luckily, Sri Islamuddin Ansari, Advocate has appeared on behalf of the respondents along with Assistant City Planner, Circle 3 and produced the records including the letters, which have been reproduced above, and the layout plan. If these documents had not been produced, the Court would have been left to grope in dark about the exact status of the land, which was given by the society to the petitioner association and the latter's right to construct compound wall. We hope and trust that in future, senior officers of the Corporation will pay serious attention to the court cases and ensure that the case of the Corporation, which represents public interest, is projected before the Court in a correct perspective.

Insofar as the present case is concerned, we are convinced that the petitioner has miserably failed to establish its right over the land measuring 164 square yards. For the reasons best known to it, the petitioner has omitted to place before the Court the documents pursuant to which the land measuring 164 square yards was transferred to it by the society. That apart, no evidence has been produced before the Court to show that 164

square yards of land is under the ownership of the petitioner association. So much so, that the Secretary of the petitioner association has not even bothered to file rejoinder to controvert the averments contained in the affidavit of Sri L.Bikshapathi that the open spaces vest in the Corporation and that the construction made by the petitioner association is illegal.

In view of the above, we hold that the petitioner has failed to show its right over the land measuring 164 square yards. It has also failed to prove that the wall in question was constructed after obtaining permission from the competent authority and that the officers of the Corporation are responsible for demolishing the same. In any case, such contentious issues can be appropriately decided by the civil court.

In the result, the writ petition is dismissed. Ordinarily, we would have saddled the petitioner with costs, but in the peculiar facts of this case, we deem it proper to impose costs of Rs.5,000/- on the Municipal Corporation of Hyderabad because the officer who filed the counter affidavit deliberately omitted to place before the Court important documents including the layout and but for the fact that these documents were produced during the course of hearing, the larger public interest would have suffered. The amount of costs be deposited with Andhra Pradesh State Legal Services Authority within a period of 15 days from today. The Commissioner, Municipal Corporation of Hyderabad is directed to recover the amount of costs from the person who may be found responsible for not putting in appearance before the Court on 2nd of February, 2007 and the officer, who filed affidavit without annexing the relevant document.

With a view to ensure that in future, the cause of the Corporation is properly represented, we direct the Commissioner of the Municipal Corporation of Hyderabad to issue instructions that in cases involving the Corporation, the officer in-charge of the case should remain present in the Court along with the records.

As a sequel to dismissal of the writ petition, WPMP.No.806 and 18975 of 2006 filed by the petitioner for interim relief are also dismissed.

G.S.SINGHVI, C.J.

5th February, 2007

C.V.NAGARJUNA REDDY, J.

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